

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MOBILE DEVICES,
ASSOCIATED SOFTWARE, AND
COMPONENTS THEREOF**

Investigation No. 337-TA-744

**NOTICE OF A COMMISSION FINAL DETERMINATION OF VIOLATION OF
SECTION 337; ISSUANCE OF A LIMITED EXCLUSION ORDER; TERMINATION OF
INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337) by respondent Motorola Mobility, Inc. of Libertyville, Illinois ("Motorola") in the above-captioned investigation. The Commission has issued a limited exclusion order directed to the infringing products of Motorola and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 5, 2010, based on a complaint filed by Microsoft Corporation of Redmond, Washington ("Microsoft"). 75 *Fed. Reg.* 68379-80 (Nov. 5, 2010). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile devices, associated software, and components thereof by reason of infringement of U.S. Patent Nos. 5,579,517 ("the '517 patent"); 5,758,352 ("the '352 patent"); 6,621,746 ("the '746 patent"); 6,826,762 ("the '762 patent"); 6,909,910 ("the '910 patent"); 7,644,376 ("the '376 patent"); 5,664,133 ("the '133 patent"); 6,578,054 ("the '054 patent"); and 6,370,566 ("the '566 patent.") Subsequently, the '517 and the '746 patents were terminated from the investigation.

The notice of investigation, as amended, names Motorola Mobility, Inc. of Libertyville, Illinois and Motorola, Inc. of Schaumburg, Illinois as respondents. Motorola, Inc. n/k/a Motorola Solutions was terminated from the investigation based on withdrawal of infringement allegations on July 12, 2011.

The presiding administrative law judge (“ALJ”) issued the final initial determination (“ID”) on violation in this investigation on December 20, 2011. He issued his recommended determination on remedy and bonding on the same day. The ALJ found that a violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mobile devices, associated software, and components thereof containing same by reason of infringement of one or more of claims 1, 2, 5 and 6 of the ‘566 patent. Both Complainant and Respondent filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions.

The Commission determined to review various portions of the final ID and issued a Notice to that effect dated March 2, 2012. 77 *Fed. Reg.* 14043 (Mar. 8, 2012). In the Notice, the Commission also set a schedule for the filing of written submissions on the issues under review, including certain questions posed by the Commission, and on remedy, the public interest, and bonding. The parties have briefed, with initial and reply submissions, the issues under review and the issues of remedy, the public interest, and bonding. Public interest comments were also received from non-parties Association for Competitive Technology, Inc. and Google Inc.

On review, the Commission has determined as follows.

(1) To affirm with modifications the ALJ’s determination that Microsoft met the economic prong of the domestic industry requirement with respect to all of the presently asserted patents in this investigation, *i.e.*, the ‘352 patent, the ‘762 patent, the ‘910 patent; the ‘376 patent, the ‘133 patent, the ‘054 patent, and the ‘566 patent;

(2) With respect to the ID’s determination regarding the technical prong of the domestic industry requirement with respect to all of the presently asserted patents:

(a) to affirm with modifications the ALJ’s determination that Microsoft failed to meet the technical prong of the domestic industry requirement with respect to the ‘054 patent;

(b) to affirm the ALJ’s determination that Microsoft satisfied the technical prong of the domestic industry requirement with respect to the ‘566, ‘133, and ‘910 patents;

(c) to reverse the ALJ’s determination that Microsoft failed to meet the technical prong of the domestic industry requirement with respect to the ‘352 patent;

(d) to affirm the ALJ’s determination that Microsoft failed to meet the technical prong of the domestic industry requirement with respect to the ‘762 and ‘376 patents;

(3) To affirm with modifications the ALJ's determination that the asserted claims of the '566 patent are not invalid due to anticipation or obviousness;

(4) To reverse the ALJ's determination that Microsoft failed to carry its burden of showing that Motorola's accused products infringe the asserted claims of the '352 patent and determine that, based on the record, Microsoft proved by a preponderance of the evidence that Motorola's accused products directly infringe the '352 patent;

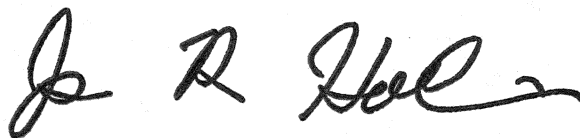
(5) To affirm the ALJ's determination that Microsoft failed to prove by a preponderance of the evidence that Motorola induced infringement of each of the '054, '762, '376, '133, and '910 patents, and to affirm with modifications the ALJ's determination that Microsoft failed to prove by a preponderance of the evidence that Motorola induced infringement of each of the '566 and '352 patents.

The Commission has determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry for consumption of mobile devices, associated software and components thereof covered by claims 1, 2, 5, or 6 of the United States Patent No. 6,370,566 and that are manufactured abroad by or on behalf of, or imported by or on behalf of, Motorola. The order provides an exception for service, repair, or replacement articles for use in servicing, repairing, or replacing mobile devices under warranty or insurance contract.

The Commission has further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. § 1337(d)(1)) do not preclude issuance of the limited exclusion order. Finally, the Commission determined that Motorola is required to post a bond set at a reasonable royalty rate in the amount of \$0.33 per device entered for consumption during the period of Presidential review. The Commission's order was delivered to the President and the United States Trade Representative on the day of its issuance.

The Commission has therefore terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and sections 210.41-.42, 210.50 of the Commission's Rules of Practice and Procedure (19 CFR § 210.41-.42, 210.50).

By order of the Commission.

A handwritten signature in black ink, appearing to read "J R Holbein", written in a cursive style.

James R. Holbein
Secretary to the Commission

Issued: May 18, 2012

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN MOBILE DEVICES,
ASSOCIATED SOFTWARE, AND
COMPONENTS THEREOF**

Investigation No. 337-TA-744

LIMITED EXCLUSION ORDER

The Commission has determined that there is a violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the unlawful importation, sale for importation, or sale in the United States after importation by Respondent Motorola Mobility, Inc. of certain mobile devices, associated software and components thereof that infringe claims 1, 2, 5, or 6 of United States Patent No. 6,370,566. Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made a determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of infringing mobile devices, associated software and components thereof that are manufactured abroad by or on behalf of, or imported by or on behalf of Respondent or any of its affiliated companies, parents, subsidiaries, licensees, or other related business entities, or their successors or assigns.

The Commission has determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude the issuance of a limited exclusion order. The bond during the Presidential review shall be a reasonable royalty in the amount of \$0.33 per device entered for consumption.

Accordingly, the Commission hereby **ORDERS** that:

1. Mobile devices, associated software and components thereof covered by claims 1, 2, 5, or 6 of United States Patent No. 6,370,566 that are manufactured abroad by or on behalf of, or imported by or on behalf of, Respondent or any of its affiliated companies, parents, subsidiaries, successors, assigns, or other related business entities, are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent, except under license of the patent's owner or as provided by law, and except for service, repair, or replacement articles imported for use in servicing, repairing, or replacing mobile devices under warranty or insurance contract for an identical article that was imported prior to the effective date of this Order.

2. At the discretion of U.S. Customs and Border Protection ("CBP") and pursuant to procedures it establishes, persons seeking to import mobile devices, associated software and components thereof that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

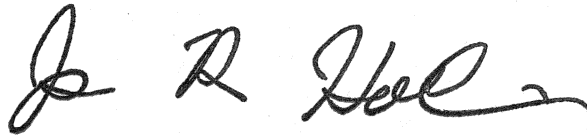
3. In accordance with 19 U.S.C. § 1337(1), the provisions of this Order shall not apply to mobile devices, associated software and components thereof that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

4. The Commission may modify this Order in accordance with the procedure developed in Section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

5. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the Bureau of Customs and Border Protection.

6. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.

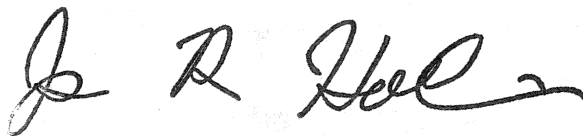
A handwritten signature in black ink, appearing to read "J R Holbein", with a stylized flourish at the end.

James R. Holbein .
Secretary to the Commission

Issued: May 18, 2012

CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **Commission Notice** has been served in the manner indicated to the following parties on **May 18, 2012**.



James R. Holbein, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant Microsoft Corporation:

Brian R. Nester, Esq.
SIDLEY AUSTIN LLP
1501 K Street, NW
Washington, DC 20005

() Via Hand Delivery
(x) Via Overnight Delivery
() Via First Class Mail
() Other: _____

On Behalf of Motorola Mobility, Inc.:

Charles F. Schill, Esq.
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

() Via Hand Delivery
(x) Via Overnight Delivery
() Via First Class Mail
() Other: _____